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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Telecommunications Act  
of 1996

Telecommunications Carriers' Use of Customer  
Proprietary Network Information and Other  
Customer Information

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CC Docket No. 96-115

RESPONSE OF E.SPIRE COMMUNICATIONS, INC.  
TO PETITIONS FOR RECONSIDERATION

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e.spire Communications, Inc. (“e.spire”),<sup>1</sup> by its attorneys and pursuant to Section 1.429 of the rules of the Federal Communications Commission (“FCC” or “Commission”),<sup>2</sup> hereby respectfully submits this response to the Petitions for Reconsideration in the above-captioned proceeding.

## INTRODUCTION

e.spire is an integrated communications provider (“ICP”) that provides integrated voice and data communications services to small and mid-sized metropolitan markets across the Nation. Since 1994, when e.spire commenced operations as a competitive access provider (“CAP”), e.spire has constructed local fiber optic networks in 32 markets. e.spire subsequently expanded its business to become a competitive local exchange carrier (“CLEC”) by installing 18

<sup>1</sup> e.spire formerly was known as American Communications Services, Inc. (“ACSI”).

<sup>2</sup> 47 C.F.R. § 1.106.

local exchange switches. By year-end 1998, e.spire expects to have as many as 25 such switches in operation. e.spire's recent acquisition of Cybergate, an internet service provider ("ISP"), added internet access services to its product line. Moreover, e.spire launched an interexchange product last year, thereby rounding out its product line to include a complete array of telecommunications products and services.

As an ICP offering a full range of basic and enhanced services, e.spire is directly affected by the CPNI rules because they restrict its ability to cross-market its services to its customers. While e.spire generally supports the Commission's CPNI rules as a reasonable attempt to strike a workable balance between consumers' interest in meaningful competition and their interest in privacy, e.spire is concerned that the new CPNI rules will, in some cases, do more harm than good. e.spire submits that improper use of CPNI by incumbent local exchange companies ("ILECs") has been, and will continue to be, the greatest threat to the public interest identified in Section 222 of the Communications Act of 1934, as amended.<sup>3</sup> Thus, as discussed in further detail below, e.spire submits that, to the extent CPNI rules are necessary at all, they must be tailored to address the specific danger of ILEC abuses.

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<sup>3</sup> 47 U.S.C. § 222.

## I. THE FCC'S CPNI RESTRICTIONS SHOULD APPLY ONLY TO ILECS

e.spire agrees that "privacy is a concern which applies regardless of carrier size."<sup>4</sup>

However, despite the advances that competitive carriers have made in the last two years, ILECs continue to have a virtual monopoly over the local telecommunications market. As the Commission has observed, ILECs have "more potential for competitive abuse of CPNI because of their large customer base."<sup>5</sup> As noted by LCI and CompTel, ILECs have unparalleled access to the CPNI of almost every customer in their service territories, which gives them a significantly greater base of customer information than all of the CLECs combined have.<sup>6</sup> The potential for abuse is staggering, particularly since the Commission has removed CPNI from the class of information subject to Section 272's non-discrimination requirements. Thus, the new CPNI rules create a monster by allowing BOCs to share CPNI information with their affiliates and then try to restrain it by restricting every carrier's use of CPNI, without even explaining "how applying CPNI rules to non-ILECs can in any way affect the greater potential for abuse by ILECs of their own CPNI."<sup>7</sup>

e.spire respectfully submits that the Commission must tailor its rules to address the particular danger posed by the ILECs while not hindering the legitimate marketing efforts of competitive carriers. Thus, e.spire agrees with CompTel and LCI that the Commission should

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<sup>4</sup> *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27, ¶14 (rel. Feb. 26, 1998).

<sup>5</sup> *Id.*

<sup>6</sup> See LCI Petition for Reconsideration at 12; CompTel Petition for Reconsideration at § 1(c).

<sup>7</sup> LCI Petition for Reconsideration at 13.

establish a two-tiered regulatory structure whereby the rules applicable to ILECs are more stringent than those that apply to competitive carriers.

## **II. THE COMMISSION MUST MAINTAIN THE “WIN BACK” RESTRICTION ON ILECs**

As a competitive entrant into the market for local telecommunications, e.spire is particularly concerned by efforts to eliminate altogether the “win back” provision of the CPNI rules.<sup>8</sup> Although e.spire shares the concern of other carriers that the win back restriction will impede legitimate efforts to market telecommunications services to former customers, e.spire believes that the anti-competitive impact of allowing ILECs, including those seeking elimination of this provision, to use CPNI to regain former customers would be far too great to be left unchecked. In fact, the use of CPNI by some ILECs to win back customers who have selected e.spire has been a serious and continuing problem.

ILECs are in the unique position of receiving “advance warning” of the loss of each customer to a competitor. Whenever a CLEC succeeds in selling a new account, and submits an order for provisioning of an unbundled loop or local resale services, the ILEC is informed of the customer’s decision in advance of the actual conversion. The motive and opportunity to misuse CPNI to launch a “win back” effort is enormous, and only a prohibition such as the Commission has established in the CPNI rules can prevent such an abuse. Thus, e.spire strongly opposes ILEC requests that the Commission modify the “win back” restriction as it pertains to ILECs.

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<sup>8</sup> 47 C.F.R. §64.2005(b)(3). *See, e.g., In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, GTE Petition for Reconsideration at 32-38; BellSouth Petition for Reconsideration at 16-18, Bell Atlantic Petition for Reconsideration at 16-20, AT&T Petition for Reconsideration at 2-5, SBC Petition for Reconsideration at 8-10.

### **III. THE COMMISSION'S DATABASE REQUIREMENTS ARE EXCESSIVE AND UNJUSTIFIABLE**

e.spire strongly supports the FCC's twin goals of preventing anti-competitive uses of CPNI and protecting consumers' interest in the privacy of CPNI. However, e.spire concurs with other petitioners that the database requirements imposed by the CPNI rules<sup>9</sup> are excessive and unjustifiable.<sup>10</sup> Thus, e.spire respectfully submits that the FCC's requirements regarding the database monitoring of access and use of CPNI, along with other compliance requirements, should be reconsidered and stricken because they are neither necessary nor appropriate, particularly when applied to new entrants.

The Commission's rules attempt to micromanage the internal information systems employed by carriers. In so doing, the CPNI rules impose unduly burdensome tracking requirements and system modifications that are simply unrealistic. The efforts of e.spire and other new entrants to establish and upgrade their MIS already is taxed to the limit. Establishing end user billing systems, carrier billing and auditing systems, ordering and provisioning systems, and the like, are an enormous ongoing undertaking. Now, under the CPNI rules, they must go back and revamp many of those same systems. While e.spire is committed to complying with the Commission's rules, the Commission's interest in tracking CPNI compliance is outweighed by the interference these CPNI-related system modifications would cause in critical ongoing business affairs of e.spire and other new entrants.

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<sup>9</sup> 47 C.F.R. § 64.2009.

<sup>10</sup> *See, e.g.,* LCI Petition for Reconsideration at 2-6, Ameritech Petition for Reconsideration at 8-11, AT&T Petition for Reconsideration at 8-17, BellSouth Petition for Reconsideration at 18-23, Bell Atlantic Petition for Reconsideration at 22.

As Ameritech noted, “the costs of such a requirement are not minimal and any benefits are less than clear.”<sup>11</sup> e.spire submits there is no basis in the record supporting a mandate that the valuable and limited resources of carriers, particularly small carriers, be diverted to implementing the CPNI database requirements. Further, given that the Commission did not even conduct the meanest regulatory impact analysis of these requirements, e.spire submits that there is no basis in the record for imposing these requirements at all. Therefore, the Commission should reconsider the entire premise of its enforcement scheme for CPNI. There simply is no reason to impose such extensive tracking, monitoring, oversight and certification requirements absent a clear indication that carriers generally fail to comply with the privacy requirements of Section 222.<sup>12</sup>

#### **IV. THE PROHIBITION ON CROSS-SELLING CPE AND INFORMATION SERVICES UNDERMINES THE CARRIER-CUSTOMER RELATIONSHIP**

e.spire also supports requests for reconsideration of the Commission’s prohibition on the use of CPNI to market CPE and information services. This prohibition should be reconsidered and stricken because it undermines the basic carrier-customer relationship by depriving customers of the benefits of the seamless provision of telecommunications and related services.<sup>13</sup>

Customers do not make the same distinctions between telecommunications products and services that regulators and lawyers make.<sup>14</sup> Thus, customers expect their telecommunications

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<sup>11</sup> Ameritech Petition for Reconsideration at 8.

<sup>12</sup> To the extent the Commission continues to apply these database requirements to all carriers, e.spire respectfully requests that the Commission grant an appropriate extension of the implementation period.

<sup>13</sup> 47 C.F.R. § 64.2005(b)(1). *See, e.g.*, LCI Petition for Reconsideration at 7-11, Ameritech Petition for Reconsideration at 2-6, Bell South Petition for Reconsideration at 5-11, CompTel Petition for Reconsideration at Part III.

<sup>14</sup> *See, e.g.*, BellSouth Petition for Reconsideration at 6-7 (stating that “[t]he Commission effectively dismissed out of hand arguments and showings that customers’ expectations (continued...)”).

service providers to offer products and services that have a natural identity with one another. As Ameritech pointed out, “to customers, it is simply logical that the local exchange carrier that provides them with dial tone can also provide them with the telephone to use it.”<sup>15</sup> In the case of e.spire, as an ICP, its customers expect it to offer not only basic telecommunications services, but also related information services such as voice mail, internet access and protocol conversion.

The Commission’s CPNI rules undercut the natural synergy that exists between some telecommunications products and services and some CPE and information products and services. Moreover, it undermines the relationship that exists between carriers and their customers because customers expect that their customer-carrier relationship “embraces products and services naturally related to the backbone telecommunications services that form the primary link between the customer and the carrier.”<sup>16</sup> If carriers’ hands are tied when it comes to helping their customers identify and obtain services and products that enhance their basic telecommunications service, the result will be a lot of unnecessary and unavoidable customer confusion and frustration.

The Commission’s prohibition on cross-selling CPE and information services using CPNI is not necessary to protect consumers and is contrary to the public interest. Therefore, e.spire respectfully requests that the Commission strike this provision as it relates to competitive carriers.

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(...continued)

are not defined by arbitrary (from a practical perspective) regulatory and legal service/function/product classifications.”).

<sup>15</sup> Ameritech Petition for Reconsideration at 4.

<sup>16</sup> *Id.*



**V. THE COMMISSION MUST CLARIFY THAT CLECs DO NOT NEED A WAIVER OF THE CPNI RULES IN ORDER TO INITIATE SERVICE**

Finally, as MCI notes in its Petition for Reconsideration, “the Commission should reverse its decision that Section 222(d)(1) only allows a carrier that already has CPNI to use it to initiate service without customer approval.”<sup>17</sup> This restriction is inconsistent with both the statutory language and the public interest because it interferes with the basic and critical function of transitioning a customer from one carrier to another.<sup>18</sup> Therefore, the Commission should clarify that CLECs do not need a waiver of the CPNI rules in order to initiate service.

**CONCLUSION**

The Commission’s CPNI rules will play an important role in the development of meaningful competition in the market for all telecommunications products and services in the years to come. e.spire supports the Commission’s effort to strike an appropriate and workable balance between the public interest in competition and in privacy. Unfortunately, e.spire believes that, to the

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<sup>17</sup> MCI Petition for Reconsideration at 27-28.

<sup>18</sup> *See id.* at 28-29 (stating “[j]ust as it is part of a relay runner’s mission to pass the baton to the next runner, a carrier’s disclosure of CPNI to enable another carrier to continue providing the same service is an important part of the disclosing carrier’s total service offering to the customer.”).

extent described herein, the CPNI rules are overly ambitious, attempting to cure problems that do not exist with solutions that are overreaching and/or impractical. Thus, e.spire respectfully submits that the CPNI rules should be reconsidered.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Response of e.spire Communications, Inc. to Petitions for Reconsideration" were served this 25th day of June, 1998, by U.S. first class mail, postage pre-paid, on the following:

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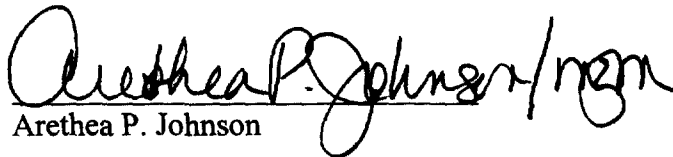
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